

**Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

**In the Matter of**

**Empowering Parents and Protecting  
Children in an Evolving Media Landscape**

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MB Docket No. 09-194

**REPLY COMMENTS OF CAMPAIGN  
FOR A COMMERCIAL FREE CHILDHOOD**

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## SUMMARY

The Campaign for a Commercial-Free Childhood (“CCFC”), by its attorneys, the Institute for Public Representation, respectfully submits these reply comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Inquiry, *Empowering Parents and Protecting Children in an Evolving Media Landscape*.<sup>1</sup> CCFC is a non-profit national coalition of health care professionals, educators, advocacy groups, and concerned parents. These comments address three issues relevant to the Commission’s inquiry about the best ways “to empower parents to help their children take advantage of [the] opportunities [presented by new technologies], while at the same time protecting children from the risks inherent in use of these platforms.”<sup>2</sup> First, in response to the Commission’s question about whether the benefits of media consumption vary with age,<sup>3</sup> we discuss the growing market in screen media targeted at infants and point out that there is no evidence that children under the age of two derive any educational value from watching media that is often promoted as educational for babies. Children under the age of two have significant exposure to screen time, and parents have been misled by educational claims made by purveyors of media programming for babies. The Commission should do what it can to counteract this deceptive marketing and educate parents about the dearth of support for the proposition that this media targeted toward babies is educational.

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<sup>1</sup> Empowering Parents and Protecting Children in an Evolving Media Landscape, MB Docket No. 09-194 (Oct. 23, 2009), hereinafter “NOI.”

<sup>2</sup> NOI at ¶1.

<sup>3</sup> NOI at ¶23.

Second, in response to the Commission's questions about whether industry self-regulation of advertising to children has been effective,<sup>4</sup> we discuss findings by the Federal Trade Commission and the CCFC that the industry continues to target children by advertising violent movies to them, including in partnership with toys and unhealthy food products. Since industry self-regulation has been shown to be a failure, the Commission should step in by promulgating a rule that movies and tie-ins for movies with a PG-13 or more restrictive rating should not be advertised during television programming rated for an audience more general than TV-14 between 6 A.M. and 8 P.M.

Finally, in response to the Commission's question about advertising and privacy in new media,<sup>5</sup> we raise concerns about the risks of exposure to excessive commercialization and privacy violations posed by many of the products marketed to parents as tools for child protection. Though these tools are widely recommended, they present significant risks of exposure to advertising and privacy invasion. The Commission should try to protect children from inappropriate content on the Internet, but recommending parental control technologies without recognizing the risks associated with them is not the way to achieve this goal.

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<sup>4</sup> NOI at ¶¶39-40.

<sup>5</sup> NOI at ¶¶31, 36-38.

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**REPLY COMMENTS**

The Campaign for a Commercial-Free Childhood, by its attorneys, the Institute for Public Representation, respectfully submits these reply comments in response to the Federal Communication Commission’s Notice of Inquiry, *Empowering Parents and Protecting Children in an Evolving Media Landscape*.<sup>6</sup> CCFC is a non-profit national coalition of health care professionals, educators, advocacy groups, and concerned parents. These reply comments address three issues relevant to the Commission’s inquiry. First, we answer the Commission’s question about whether the potential benefits of children’s media consumption vary with age by pointing out that there is no evidence that children under the age of two are able to derive any educational value from media that is often promoted as educational for babies.<sup>7</sup> Second, in response to the Commission’s questions about the efficacy of industry self-regulation for controlling advertising to children, we point out that self-regulation has been ineffective and ask that the Commission take action to curb the marketing of violent PG-13 movies to children.<sup>8</sup> Finally, in response to the Commission’s concerns about protecting children from the risks presented by new technology, we discuss the risks of inappropriate content on the Internet and argue that the Commission is not doing enough to protect children online; we discuss in depth the fact that parental control products, which the Commission recommends as part of the

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<sup>6</sup> NOI.  
<sup>7</sup> NOI at ¶23.  
<sup>8</sup> NOI at ¶¶39-40.

solution, pose significant risks of exposing children to commercialized content and privacy breaches.<sup>9</sup>

**I. CHILDREN UNDER AGE TWO DO NOT BENEFIT FROM AND MAY BE HARMED BY EXPOSURE TO ELECTRONIC MEDIA**

The NOI asks whether the “benefits to children [of media consumption] vary depending on the child’s age” and whether parents are aware of the benefits and risks.<sup>10</sup> While children over the age of two may benefit from watching or interacting with well-designed, age appropriate media content, there is little evidence of benefits for children under two. Not only do studies fail to show benefits, some suggest that the viewing of these videos may be harmful to babies’ development.

Nonetheless business is booming for companies that create “educational” media targeted at infants. Companies, such as BabyFirstTV, Baby Einstein, and Baby Brainy, have marketed (and in some cases continue to market) their content as educational for babies. As a result, many parents erroneously believe that this media helps their children develop and learn. Thus, CCFC urges that FCC consider how to counteract this deceptive marketing and ensure that parents are accurately informed about the lack of educational benefits and possible health risks of their babies's exposure to electronic media.

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<sup>9</sup> NOI at ¶¶1, 31, 36-38.

<sup>10</sup> NOI at ¶¶ 23, 28.

**A. Studies Have Found that Watching Media Offers No Educational Benefits for Children Under Age Two and May Impede Their Development**

In 1999, the American Academy of Pediatrics (“AAP”) recommended that parents “avoid television viewing for children under the age of 2 years.”<sup>11</sup> It explained that:

Although certain television programs may be promoted to this age group, research on early brain development shows that babies and toddlers have a critical need for direct interactions with parents and other significant care givers (e.g. child care providers) for healthy brain growth and the development of appropriate social, emotion, and cognitive skills. Therefore, exposing such young children to television programs should be discouraged.<sup>12</sup>

The AAP periodically reviews this recommendation in light of new research and now recommends avoiding “all screen media” for children under the age of two.<sup>13</sup>

Little published research examines the impact of viewing screen media of any kind on very young children. A literature review published in 2006 found that “[d]espite the fact that infants are the fastest growing television market segment, this review was unable to find any studies in this age group that met our inclusion criteria with children under the age of 3 years.”<sup>14</sup>

Another literature review concluded that the “totality of results thus far suggests that very young

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<sup>11</sup> *Media Education*, 104(2) PEDIATRICS 341, 342 (Aug. 1999), available at <http://aappolicy.aappublications.org/cgi/reprint/pediatrics;104/2/341.pdf> (hereinafter “AAP Media Education Policy Statement”) (last visited Feb. 22, 2010).

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., APA Advocates for Safer Media and Music Lyrics, MEDICAL NEWS TODAY, Oct. 20, 2009; Barbara C. Meltz, *DVD Series for Babies, Parents Fuels TV Debate*, BOSTON GLOBE, Mar. 22, 2006, at A1, available at <http://www.commercialfreechildhood.org/news/dvdseriesfuelsdebate.htm> (last viewed Feb. 22, 2010); American Academy of Pediatrics, Policy Statement, *Children, Adolescents, and Television*, 107(2) PEDIATRICS 423 (2001).

<sup>14</sup> Thakkar, R.R. et al, *A Systemic Review for the Effects of Television Viewing by Infants and Preschoolers*, 118 PEDIATRICS 2025, 2030 (2006).

children learn less from television than from equivalent real life experiences.”<sup>15</sup> It concluded that except for one study, “there is very little evidence that children younger than 2 learn anything useful from television. The evidence indicates that exposure to television is associated with relatively poor outcomes.”<sup>16</sup> The authors warn that due to the lack of research, “[a]s a society, we are engaged in a vast and uncontrolled experiment with our infants and toddlers, plunging them into home environments that are saturated with electronic media.”<sup>17</sup>

Some of the studies that have been published suggest a correlation between infant viewing and adverse affects. A number of studies have demonstrated that exposure to screen media may impair children’s linguistic development.<sup>18</sup> Another study found that children who watched more than three hours of TV daily before age three scored lower on IQ and academic tests at ages six and seven versus children who watch less.<sup>19</sup> Yet another study found that

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<sup>15</sup> Daniel R. Anderson and Tiffany A. Pempek, *Television and Very Young Children*, 48(5) AM. BEHAVIORAL SCIENTIST 505, 511(2005).

<sup>16</sup> *Id.* at 518. The exception referred to is Linebarger, D.L. & Walker, D., *Infants’ and Toddlers’ Television Viewing and Language Outcomes*, 48 AM. BEHAVIORAL SCIENTIST 624 (2005). This study suggests that “appropriate, curriculum-based educational programs may have beneficial associations with expressive language production and vocabulary,” but that more research is needed. *Id.*

<sup>17</sup> Anderson & Pempek, *supra* note 15, at 519.

<sup>18</sup> Rebekah A. Richert, Michael B. Robb, Jodi G. Fender & Ellen Wartella, *Word Learning from Baby Videos*. 164(5) ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE (2010) (finding that children did not learn vocabulary from Baby Wordsworth videos and that the younger children were when they watched their first video, the lower their language scores were); Frederik J. Zimmerman, Dimitri A. Christakis & Andrew N. Meltzoff, *Associations between Media Viewing and Language Development in Children Under Age 2 Years*. 161(5) ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 364, 366 (2007) (“This analysis reveals a large negative association between viewing of baby DVDs/videos and vocabulary acquisition in children age 8 to 16 months.”); Victor C. Strasburger, *First Do No Harm: Why Have Parents and Pediatricians Missed the Boat on Children and Media?* 161(5) ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 334-35 (2007) (citing three studies which all show that screen media for infants may impair linguistic development).

<sup>19</sup> Frederik J. Zimmerman & Dimitri A. Christakis, *Children’s Television Viewing and Cognitive Outcomes: A Longitudinal Analysis of National Data*. 159(7) ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 619-625 (2005).

television viewing by infants and toddlers displaced brain stimulating activities with proven developmental benefits, such as parent and sibling interaction and creative play.<sup>20</sup> Other studies have found that television exposure at a young age may contribute to childhood obesity. For example, Dennison found that a preschooler's risk for obesity increased by 6% for every hour of TV watched per day. If there was a TV in the child's bedroom, the odds jumped an additional 31% for every hour watched.<sup>21</sup> Other studies have suggested links between early television viewing and irregular sleep patterns,<sup>22</sup> bullying<sup>23</sup> and attentional problems.<sup>24</sup>

Because of these concerns, other countries have taken steps to limit or recommend against screen media for infants. For example, France's High Audiovisual Council banned French television channels from airing programs directed at children under three years of age.<sup>25</sup>

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<sup>20</sup> Elizabeth A. Vandewater, et al., *Time Well Spent? Relating Television Use to Children's Free-Time Activities*, 117(2) PEDIATRICS 181 (2006).

<sup>21</sup> Barbara A. Dennison, et al., *Television Viewing and Television in Bedroom Associated with Overweight Risk among Low-Income Preschool Children*, 109 PEDIATRICS, 1028-1035 (2002). See also Julie C. Lumeng, et al., *Television Exposure and Overweight Risk in Preschoolers*, 160(4) ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 417 (2006)(exposure to 2 hours or more of television today was associated with an increased risk of overweight at both age 36 months and 54 months).

<sup>22</sup> Darcy A. Thompson and Dimitri A. Christakis, *The Association Between Television Viewing and Irregular Sleep Schedules Among Children Less Than 3 Years of Age*, 116(4) PEDIATRICS 851 (2005).

<sup>23</sup> Frederik J. Zimmerman et al., *Early Cognitive Stimulation, Emotional Support, and Television Watching as Predictors of Subsequent Bullying among Grade School Children*, 159(4) ARCHIVES OF PEDIATRIC AND ADOLESCENT MEDICINE 384-8 (2005) (finding that children at age 4 who watch TV are more likely to become bullies in grade school.).

<sup>24</sup> Frederik J. Zimmerman, F. & Dimitri A. Christakis, *Associations Between Content Types of Early Media Exposure and Subsequent Attentional Problems*, 120(5) PEDIATRICS 986-92 (2007) (finding that viewing of either violent or non-violent entertainment television, but not educational television, before age 3 was significantly associated with attentional problems 5 years later and that the magnitude of the association was large); Frederik J. Zimmerman et al., *Early Television Exposure and Subsequent Attentional Problems in Children*, 113(4) PEDIATRICS 708-13 (2004) (finding that early television exposure is associated with attentional problems at age 7).

<sup>25</sup> *France bans broadcast of TV shows for babies*, MSNBC, Aug. 20, 2009, available at <http://www.msnbc.msn.com/id/26312386/> (last visited Feb. 22, 2010). It also required cable operators that offer foreign channels to include a warning stating, "Watching television can slow

Additionally, the Australian government recently released draft guidelines recommending against any television or electronic media for children under two years old, and no more than one hour per day for children between the ages of two and five.<sup>26</sup>

## **B. Children Under Age Two Are Regularly Provided with Electronic Media**

Despite the research about the lack of benefits and possible harms associated with infant screen time, parents are putting their infants in front of the television quite regularly. A 2006 Kaiser Family Foundation (“KFF”) report found that each day, 61 percent of children between ages zero and one and 88 percent of children aged two-three use screen media daily.<sup>27</sup> Children aged zero-one who used screen media used it for an average of one hour and twenty minutes per day; children aged two-three who used screen media did so for an average of two hours and seven minutes.<sup>28</sup> This means that babies, who are only awake for about twelve hours a day, are spending between 10% and 20% of their waking hours watching television. This report also

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the development of children under 3, even when it involves channels aimed specifically at them.”  
*Id.*

<sup>26</sup> Bonnie Malkin, *Australia: ban TV for under-twos*, Telegraph.co.uk, Oct. 12, 2009, available at [http://www.telegraph.co.uk/health/children\\_shealth/6306858/Australia-ban-TV-for-under-twos.html](http://www.telegraph.co.uk/health/children_shealth/6306858/Australia-ban-TV-for-under-twos.html) (last visited Feb. 22, 2010).

<sup>27</sup> Victoria J. Rideout, et al., *The Media Family: Electronic Media in the Lives of Infants, Toddlers, Preschoolers and Their Parents*, at 9 (Kaiser Family Foundation) (2006) (hereinafter “KFF 2006”), available at <http://www.kff.org/entmedia/7500.cfm> (last visited Feb. 22, 2010). In a typical day, 75% of children aged 0 to 6 watch television, 32% watch videos, 16% use the computer, and 11% play video games. In all, 83% use some sort of screen media. An earlier KFF report made similar findings. Victoria J. Rideout, et al., *Zero to six: Electronic media in the lives of infants, toddler and preschoolers* at 5 (Kaiser Family Foundation) (2005) (finding that 68% of children under two spend an average of two hours five minutes with screen media per day. Although this figure includes TV, videos, computers, and video games, the overwhelming majority comes from TV and videos.).

<sup>28</sup> *Id.*

found that that 19% percent of babies zero to one year and 29% of children two to three years have a television in their bedroom.<sup>29</sup>

### **C. Parents Have Been Misled by Deceptive Claims about the Educational Value of Infant Media**

The success of the infant media companies must be attributed in part to their efforts to market their products as educational for babies. A 2003 KFF study found that 49% of parents thought that educational videos were “very important” in the intellectual development of children.<sup>30</sup> In May 2006, CCFC filed a complaint with the FTC asking it to investigate Baby Einstein and Baby Brainy for deceptive trade practices.<sup>31</sup> The Complaint cited deceptive marketing claims made by Baby Einstein. For example,

Baby Einstein’s website is full of claims that its products are educational and beneficial for infants and toddlers. In its company description on the “About Us” page of its website, Baby Einstein claims to be the creator of the “infant developmental media category” of videos “specifically designed for babies and toddlers.” Baby Einstein also makes numerous claims in product descriptions found in the “Products” section of its website. Here, Baby Einstein claims: (1) Baby Wordsworth is a “rich and interactive learning experience that introduces your little one to the concepts of verbal and written communication and sign language... fosters the development of your toddler’s speech and language skills... your little one can learn new words in Spanish, French, and English, (2) with Baby da Vinci “Your

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<sup>29</sup> *Id.* at 18. Another survey found that the average baby starts watching videos at 6-months and television at 10-months of age. Marilyn Elias, *Study Takes a New Look at Tots and TV*, USA Today, August 4, 2004, at 8D (citing a study presented by Dr. Dorothy Singer at an American Psychological Association annual meeting).

<sup>30</sup> Victoria J. Rideout, et al., *Zero to Six: Electronic Media in the Lives of Infants, Toddlers and Preschoolers*, at 10 (Kaiser Family Foundation) (2003) (hereinafter “KFF 2003”), available at <http://www.kff.org/entmedia/3378.cfm> (last visited Feb. 22, 2010). Another study found that 29% of parents cited educational value as the primary reason that they showed their infants videos. Frederik J. Zimmerman, Dimitri A. Christakis & Andrew N. Meltzoff, *Television and DVD/video viewing in children younger than 2 years*. 161(5) ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 473, 475-6 (2007).

<sup>31</sup> Complaint *In re: Baby Einstein and Brainy Baby*, (May 1, 2006) <http://www.commercialfreechildhood.org/babyvideos/babyvideocomplaint.pdf> (hereinafter “CCFC Complaint”).

child will learn to identify her different body parts, and also discover each of her five senses... in Spanish, English and French!” and (3) Numbers Nursery will “help develop your baby’s understanding of what numbers mean.”<sup>32</sup>

CCFC’s Complaint also cited deceptive claims made by Brainy Baby.<sup>33</sup> For example, packaging of Baby Brainy DVDs claimed that “the educational content of Brainy Baby can help give your child a learning advantage!”<sup>34</sup> In describing its Laugh & Learn video, the company’s website asserted that “[t]he first few years of life are critical periods for brain development,” and “this video is a wonderful tool to stimulate learning in babies and toddlers. Young viewers will laugh at silly faces... while learning critical skills like problem solving, listening skills, classifying skills and concept awareness.”<sup>35</sup> Brainy Baby also claimed that its Left Brain and Right Brain videos help “develop both [the] Left and Right sides of the brain.”<sup>36</sup> Left Brain “focuses on such cognitive skills as Logic, Patterns, Letters & Numbers, Sequencing, Analyzing Details and more!” Right Brain “focuses on such cognitive skills as Creative Thinking, Art & Drawing, Rhymes, Spatial Reasoning, and Imagination, Intuition and more!”<sup>37</sup> Baby Brainy’s ad in Pregnancy magazine asserted that “Your child’s education begins at birth. That’s why the Brainy Baby video series was created, to give your child a jump-start on learning” and that “Every Brainy Baby video features 45 minutes of solid educational content... that will both entertain and educate your child.”<sup>38</sup>

After conducting an investigation, the FTC staff issued letters to CCFC and the two companies. The letter stated that “advertisers must have adequate substantiation for educational

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<sup>32</sup> *Id.* at 8 (footnotes omitted).

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 13.

and/or cognitive development claims that they make for their products, including for videos marketed for children under the age of two.”<sup>39</sup> It noted that little research had focused on the effects of viewing by young children or the effects of these products. It continued:

To the extent the existing research points in any direction, it suggests that television is an inferior means of teaching very young children compared to live demonstration. Based on our review, however, it appears that additional research is needed before reliable conclusions can be drawn about the effects of television viewing on this audience.<sup>40</sup>

Because Baby Einstein and Brainy Baby had substantially modified their websites after CCFC filed its complaint and agreed to take steps to ensure that any claims of educational or developmental benefits for children under two were adequately substantiated, the FTC staff decided not to recommend further action. Subsequently, to settle a threatened class action lawsuit in Massachusetts alleging unfair and deceptive practices, Disney agreed to offer customers refunds on its Baby Einstein videos sold between June 5, 2004 and September 4, 2009.<sup>41</sup>

However, other companies continue to make unsubstantiated educational claims for baby videos. For example, BabyFirstTV markets a subscription television channel for children up to three years of age and their parents.<sup>42</sup> This 24/7 programming is available on cable systems such as Comcast and Time Warner as well as on satellite services like Direct TV and Dish Network.

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<sup>39</sup> Letter from Mary K. Engle, director of the FTC’s Division of Advertising Practices, to Angela J. Campbell, Counsel of Institute of Public Representation, in her capacity as CCFC’s attorney, Dec. 5, 2007 (on file with Institute of Public Representation).

<sup>40</sup> *Id.* at 2.

<sup>41</sup> Tamar Lewin, *No Einstein in Your Crib? Get a Refund*, THE NEW YORK TIMES. October 24, 2009. Recently, another class action law suit was filed against Baby Einstein in California alleging deceptive and unfair practices.

<sup>42</sup> CCFC amended its complaint to include BabyFirstTV. Letter from Jennifer Prime, Counsel for Campaign for a Commercial-Free Childhood, to Donald Clark, Federal Trade Commission (June 13, 2006) *available at* <http://www.commercialfreechildhood.org/babyvideos/attachments/bftattachments/ftcletterbabyfirstTV.pdf> (last visited Feb. 22, 2010). However, the FTC has never taken any action against BabyFirst. See Appendix D for a screenshot showing how BabyFirstTV is marketed to parents.

BabyFirstTV’s website claims that “BabyFirstTV goes above and beyond traditional TV – it is *an educational tool that* provides a positive learning environment.”<sup>43</sup> It also asserts that “BabyFirstTV is a safe, positive, and friendly resource and provides an engaging and *educational experience* for baby during their first states of learning,” and that BabyFirstTV’s color-coding system helps “inform [parents] about the *educational value* of each segment.”<sup>44</sup>

There is no credible evidence that these programs can be educational for children under two, and there is some evidence that they have potential to harm such children. CCFC urges the FCC to consider how to ensure that parents and caregivers are aware of the risks associated with exposing children under the age of two to screen media and to stop companies such as BabyFirstTV from making deceptive claims about the educational value of their programming for children under age two.

## **II. THE COMMISSION SHOULD TAKE FURTHER STEPS TO CURB THE MARKETING OF VIOLENT PG-13 MOVIES TO CHILDREN**

The marketing of PG-13 movies continues to expose children to both media violence and unhealthy food choices. The NOI requests more information “on the extent to which parents are concerned about exposure of children to inappropriate content within advertisements on various media, such as offensive language, sexual content, and violence.”<sup>45</sup> Specific concerns cited in the NOI include exposure to violence and the risks of childhood obesity, among other things.<sup>46</sup>

Two recent Federal Trade Commission reports confirm the findings that the CCFC has previously submitted to the Commission. Parents are not empowered to prevent this marketing,

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<sup>43</sup> BabyFirst, *available at* <http://www.babyfirsttv.com/content.asp> (last visited February 22, 2010) (emphasis added).

<sup>44</sup> *Id.* (emphasis added).

<sup>45</sup> NOI at ¶40.

<sup>46</sup> NOI at ¶¶ 30, 34, 39.

and industry self-regulation has continuously failed to protect children. In order to shield children from being the targets of advertising for inappropriate movies, the Commission should institute a rule that movies and tie-ins for movies with a PG-13 or more restrictive rating should not be advertised during television programming rated for an audience more general than TV-14 between the hours of 6 A.M. and 8 P.M.

**A. FTC and CCFC Data Show Industry Continues Marketing Violence to Youth**

As the CCFC noted in its submission to the Child Safe Viewing Act Proceeding, the marketing of PG-13 movies to children both encourages the viewing of violent movies and promotes the consumption of junk food.<sup>47</sup> This marketing involves promoting the motion picture as well as food and toy tie-ins. Recently, the FTC cited and confirmed the CCFC's data, concluding that "[i]ndustry standards against targeting teens and younger children in the marketing of violent entertainment products have not sufficiently curbed marketing that reaches a large youth audience ... [and] standards need to be tightened and more strictly enforced."<sup>48</sup>

The CCFC tracked five summer blockbuster PG-13 movies in 2009 that were heavily marketed on children's television channels: *X-Men Origins: Wolverine*; *Transformers: Revenge of the Fallen*; *Star Trek*, *Terminator Salvation*, and *G.I. Joe: The Rise of Cobra*. CCFC monitoring included noting ads for the films themselves as well as ads for licensed toys and fast

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<sup>47</sup> Comments of the Campaign for a Commercial-Free Childhood, MB Docket 09-26, filed August 4, 2009.

<sup>48</sup> Federal Trade Commission, *Marketing Violent Entertainment to Children: A Sixth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*, at i, December 2009, hereinafter "2009 Media Violence Report," available at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf> (last visited Feb. 22, 2010).

food tie-ins. CCFC tracked the placement of such ads between March 17 and August 23 of 2009. In total, CCFC found:<sup>49</sup>

<b>Movie</b>	<b>Ads Aired on Children's Channels</b>
<i>X-Men Origins</i>	654
<i>Transformers</i>	2202
<i>Star Trek</i>	1260
<i>Terminator</i>	397
<i>G.I. Joe</i>	1533

The Federal Trade Commission confirmed that PG-13 movie marketing is targeted to children under 13.<sup>50</sup> The marketing overviews for one PG-13 movie had a target audience of children aged 8 to 14 and another had a secondary audience of children 9 to 14.<sup>51</sup> Movie studios also used focus groups with children between the ages of 7 and 12 to gauge reaction to PG-13 movies.<sup>52</sup> Of the six PG-13 movies tracked by the FTC's 2009 report, all were heavily advertised on Nickelodeon and Cartoon Network, where over half of the audience is between the ages of 2 and 11.<sup>53</sup> Movie studios also targeted children using online marketing. Display ads for 40% of the twenty top-grossing violent PG-13 movies were found on sites highly popular with children under 13.<sup>54</sup> The FTC cited CCFC's research in noting that all of the marketing plans the

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<sup>49</sup> Appendix A provides a detailed list of the ads run between March 17 and August 2, 2009, when and where they ran, and the programs during which they aired. Additionally, Appendix B is a list of the ads run between August 3 and August 23, 2009.

<sup>50</sup> 2009 Media Violence Report at 5.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 6.

<sup>54</sup> *Id.* at 8. Also, ads for 30% of the 40 top grossing PG-13 movies and some R-rated movies were found on websites popular with children aged 2 to 11

FTC reviewed included cross-promotional marketing.<sup>55</sup> In one case, while the movie was aimed at an older market, the target for the licensed product was boys 3-11.<sup>56</sup> Overall, The FTC concluded:

Marketing of PG-13 movies to young children continues to be pervasive on children's television, as well as in magazines, online, and in other venues. Movies are promoted to young children both directly and through tie-ins with children's foods, toys, and other licensed products. The extensive marketing of PG-13 movies to young children is particularly troubling given the public perception of "ratings creep" over the years.<sup>57</sup>

The FTC also confirmed CCFC's findings of heavy cross-promotions of PG-13 movies aimed at children in its recent report to Congress on Marketing Food to Children and Adolescents.<sup>58</sup> The FTC noted that "[c]ross-promotions were widespread in 2006, tying foods and beverages in all of the covered categories to about 80 movies, television shows, and animated characters that appeal primarily to children."<sup>59</sup> The report cited two PG-13 rated films, *Pirates of the Caribbean: Dead Man's Chest* and *Superman Returns*, as examples of movies that promote quick service restaurant (QSR) kids' meals and snack food through television, movie theater, Internet, food packaging, sweepstakes, and in-store display advertising.<sup>60</sup>

The FTC found that cross-promotions of this type are a huge business: "A little more than \$208 million, representing 13 percent of all reported youth marketing, was devoted to cross-promotions."<sup>61</sup> Additionally, the FTC further found that "QSRs in particular were apt to use toys

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<sup>55</sup> *Id.* at 6.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 18-19.

<sup>58</sup> Federal Trade Commission, *Marketing Food to Children and Adolescents: A review of industry expenditures, activities, and self-regulation*, July 2008, available at <http://www.ftc.gov/os/2008/07/P064504foodmktngreport.pdf> (last visited Feb. 22, 2010).

<sup>59</sup> *Id.* at 36-37.

<sup>60</sup> *Id.* at ES-4.

<sup>61</sup> *Id.* at ES-3.

linked to cross-promotions of new movies... as a means of marketing their ‘kids’ meals’ to children.”<sup>62</sup> A number of QSR campaigns in 2009 were related to PG-13 movies:

- Burger King promoted a *Star Trek* Kids’ Meal, airing 487 ads between May 4 and May 31 before 8:00 p.m. More than two-thirds of them aired before 5:00 p.m.<sup>63</sup>
- Burger King boasted that its national kids television advertising spots for *Transformers* Kids’ Meals, which began June 22, would “turn Burger King dining on its head.”<sup>64</sup>
- Burger King promoted *G.I. Joe: Return of the Cobra* through Kids’ Meals. From August 3 to August 23 alone, there were 362 Burger King ads for *G.I. Joe: Return of the Cobra*.<sup>65</sup>

Additionally, these cross-promotions are not limited to toys and television ads:

- M&M Mars promoted *Transformers* in its stores,<sup>66</sup> and on its website.<sup>67</sup>
- Burger King’s website for kids, Club BK, which “was created for children under 13,”<sup>68</sup> offered *Transformers* games and coupons.<sup>69</sup>
- The Cartoon Network launched a *Transformers* sweepstakes for children as young as four.<sup>70</sup> The grand prize was a “Hasbro Transformers Revenge of the Fallen

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<sup>62</sup> *Id.* at 34.

<sup>63</sup> YouTube.com, “Burger King Commercial – Star Trek XI (2009) – Kid’s Meal” [video], May 13, 2009, [http://www.youtube.com/watch?v=bUvnnM6\\_Ou4](http://www.youtube.com/watch?v=bUvnnM6_Ou4). Last visited Feb. 22, 2010.

<sup>64</sup> Burger King Press Release, *available at* <http://www.reuters.com/article/pressRelease/idUS88050+04-May-2009+BW20090504>. Last visited Feb. 22, 2010.

<sup>65</sup> *See* Appendix B.

<sup>66</sup> Claude Brodesser-Akner and Natalie Zmuda. “Kmart, Burger King, and Mars partner with Transformers, and each other,” *Advertising Age, Madison and Vine*. June 17, 2009, *available at* [http://adage.com/madisonandvine/article?article\\_id=137398](http://adage.com/madisonandvine/article?article_id=137398) (last visited Feb. 22, 2010).

<sup>67</sup> M&Ms, *available at* <http://www.mms.com/us/transformers/> (last visited June 22, 2009). While the M&M website does ask for an age in order to enter, and refuses entry if an age under thirteen is entered, we were easily able to exit the site, re-enter, and get into the site by entering a different, older, age.

<sup>68</sup> Burger King Club BK, “Is Club BKSM for kids of a certain age?” *available at* <http://www.clubbk.com/HelpFaqs/Default.aspx> (last visited Feb. 22, 2010).

<sup>69</sup> Burger King Club BK, “Play the new Transformers Free Mission City,” *available at* <http://www.clubbk.com/Toys/Default.aspx> (last visited June 22, 2009).

<sup>70</sup> Cartoon Network, Transformers, *available at* [http://www.cartoonnetwork.com/promos/200906\\_transformers/rules.html](http://www.cartoonnetwork.com/promos/200906_transformers/rules.html) (last visited June 23, 2009).

Movie Action Figures Prize Pack.”

This kind of cross-promotional marketing has the combined effect of promoting unhealthy food choices to children and suggesting that violent PG-13 movies are appropriate for young children.

**B. Industry Self-Regulation Has Failed and Continues to Confuse Parents**

The film industry’s continued targeting of PG-13 films to children demonstrates industry self-regulation is not an effective way to limit children’s exposure to marketing for violent movies. Further, the continued marketing of PG-13 movies to children may confuse parents as to what is appropriate for their children. This marketing sends the mixed signal that the movies are appropriate for children in contradiction to the “parents strongly cautioned” warning that comes with the PG-13 rating.

Industry attempts at self-regulation have failed to prevent movie studios from advertising PG-13 movies to young children. The Motion Picture Association of America (MPAA) and the Better Business Bureau’s Children’s Advertising Review Unit (CARU) have historically been the self-regulatory entities on these matters. On March 4, 2008, the MPAA and CARU announced a new agreement in an alleged attempt to ensure that advertising guidelines were followed by film distributors. This CARU/MPAA referral agreement has been a failure in several important respects.

First, the MPAA still has not done what the FTC urged it to do: adopt an explicit policy, incorporating objective criteria, for the marketing of PG-13 films.<sup>71</sup> There is no way, therefore, to evaluate the MPAA’s marketing guidelines for PG-13 films or to ascertain whether film

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<sup>71</sup> 2009 Media Violence Report at 3 (“The MPAA has yet to adopt any explicit policy or objective criteria restricting such marketing.”).

companies are following them. Instead, both CARU and the MPAA appear to evaluate the marketing for each film on a case-by-case basis.

Second, CARU focuses only on advertising in media, with a focus on television advertising.<sup>72</sup> It does not address the marketing of PG-13 movies to younger children through promotions such as fast food toy giveaways or through the sale of licensed merchandise. Nor does CARU consider television advertising for licensed merchandise or food promotions to be marketing for the films.

Most importantly, the CARU/MPAA agreement is ineffective. In a June 2009 report, *BNET Advertising* reported that

CARU has sent out a stream of press releases indicating it believes that sexy, violent movies are being wrongly advertised to kids—and the MPAA, per its agreement with CARU, has done nothing about it.... CARU acts as the ad industry's voluntary police force, but agrees to defer to any industry that has its own self-regulatory procedure for advertising. MPAA has one, and it has a whole different set of standards than CARU's. Thus MPAA members are essentially immune from CARU, under CARU's own rules.<sup>73</sup>

Because there are no meaningful sanctions for inappropriately advertising PG-13 movies to young children, movie studios flout the rules with impunity. They capitalize on the purchasing power of young audiences by advertising on children's television and using cross-promotions to draw in younger audiences. The lack of an explicit policy that prohibits the targeting of PG-13 movies to young children means that any company that chooses to market a

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<sup>72</sup> CARU's website describes its role to "review and evaluation of child-directed advertising in all media, and online privacy practices as they affect children."  
<http://www.caru.org/about/index.aspx> (last visited Feb. 22, 2010).

<sup>73</sup> Jim Edwards. "CARU Snookered by MPAA on Advertising Violent or Sexy Movies to Kids," *BNET Advertising*, June 17, 2004, available at <http://industry.bnet.com/advertising/10002639/car-u-snoo-kered-by-mpaa-rules-on-advertising-violent-or-sexy-movie-to-kids/> (last visited Feb. 22, 2010).

PG-13 movie in a manner consistent with the rating would be putting itself at a significant competitive disadvantage.

The MPAA repeatedly emphasizes that parents should be the ones deciding whether PG-13 movies are appropriate for their children,<sup>74</sup> but the film industry's advertising practices undermine such statements. Their marketing can lead the parent to believe that certain PG-13 movies are appropriate for their children. Some studios even modify the advertisements for violent PG-13 movies to make the films more palatable to parents.<sup>75</sup> For example, one studio, upon finding that a movie's advertisements led to the perception that it would be too scary for some children, altered the film's advertising, rather than the movie itself or its target audience.<sup>76</sup>

Changing the content of the advertisements does nothing to reduce the violent or frightening content of the movie itself, only the perception of the movie by parents. Since, parents may rely on a PG-13 movie's advertisements to determine if it is appropriate for their children, this practice undermines parents' ability to make accurate judgments about movie suitability.

Movie studios also continue to market violent PG-13 movies to children through television ads and product tie-ins, many of which encourage the consumption of unhealthy foods. Targeting these ads to children undermines the movie rating system and parents themselves by implying that these movies are appropriate for children. The goal of "empowering parents and protecting children" requires that the Commission take action to combat these advertising

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<sup>74</sup> See, e.g., MPAA letter, *supra* note 63; MPAA, "What Do the Ratings Mean," available at [http://www.mpa.org/FilmRat\\_Ratings.asp](http://www.mpa.org/FilmRat_Ratings.asp) (last visited Feb. 22, 2010).

<sup>75</sup> 2009 Media Violence Report at 5.

<sup>76</sup> *Id.* at n.35. When another studio found that its advertisements caused parental concern about the amount of violence in a film, the studio simply decided to "experiment with spots that include less intense action and more humorous/light-hearted moments in order to convince parents that [this movie] will be 'safe' for their kids to see," rather than eliminating some of the violence from the movie itself. *Id.* at 5.

practices. We request that the Commission institute a rule that movies and tie-ins for movies with a PG-13 or more restrictive rating should not be advertised during television programming rated for an audience more general than TV-14 between the hours of 6 A.M. and 8 P.M.

### **III. PARENTAL CONTROL SOFTWARE MAY INTRODUCE CHILDREN TO NEW ONLINE RISKS**

Parental control software is widely recommended to parents and policymakers as part of the solution for empowering parents online. Several of these products expose children to high levels of commercial targeting without the protections of the Children’s Television Act. Further, several employ problematic practices that threaten privacy. The Commission should protect children from over-commercialization and privacy invasion regardless of the delivery platform. At the least, the Commission should help to inform parents and legislators about the risks associated with the use of some parental control tools instead of recommending their use without reservation.

#### **A. Parental Control Software is Commonly Recommended to Parents without Discussion of the Risks Associated with Its Use**

Parental control software is widely heralded as an important part of the toolkit that parents and educators should use to protect children from inappropriate media.<sup>77</sup> Indeed, the only criticism of parental control software that is made with any regularity is that it should not be relied on as the sole means of protecting children from objectionable content. Parental controls are touted as part of the solution by both public and private bodies.

Our national public policy has promoted the use of parental control software both legislatively and via executive agencies. In 2000, Congress passed the Children’s Internet

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<sup>77</sup> See, e.g., PointSmart.ClickSafe, Task Force Recommendations for Best Practices for Child Online Safety (2009) (“PointSmart.ClickSafe Report”) *available at* <http://www.pointsmartreport.org/PointSmartReport.pdf> (last visited Feb. 22, 2010).

Protection Act, which requires that libraries and primary and secondary schools use filtering technologies in order to be eligible for federal funds for Internet access and computers intended to access the Internet.<sup>78</sup> The FTC has also promoted the use of parental control software. In a publication targeted to parents, the FTC noted that “parental controls work well for young children.”<sup>79</sup> This Commission, as well, has supported the use of parental controls. In the Child Safe Viewing Act Report, the Commission highlighted as useful tools a number of parental control technologies.<sup>80</sup> The Report contained an entire section called “Encouraging the Development and Use of Parental Controls” and included a number of statements supporting their use written by FCC commissioners. For example, Chairman Genachowski wrote that technology “can-and must-be part of the solution. Parents must have access to control technologies that can appropriately limit their children’s exposure to unsuitable material.”<sup>81</sup>

Parental control software is also broadly endorsed by private groups, which often include a mix of academics, media industry members and parent advocates. For example, PointSmart.ClickSafe, “a diverse group of representatives from technology companies, child advocacy and parents’ groups, educators, health researchers and policymakers”<sup>82</sup> noted in their recommendations for overseeing children’s media use that “best practices tend to include multiple components, such as the provision of parental controls or other tools, information about the use of the controls and information about media literacy....”<sup>83</sup> The Family Online Safety Institute (FOSI) also recommends that parents “use age-appropriate filtering, blocking and

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<sup>78</sup> See Children’s Internet Protection Act, 20 U.S.C.A. § 9134(f) (2010).

<sup>79</sup> Federal Trade Commission, *Net Cetera: Chatting with Kids about Being Online* 38 (2010), available at [www.ftc.gov/bcp/edu/pubs/consumer/tech/tec04.pdf](http://www.ftc.gov/bcp/edu/pubs/consumer/tech/tec04.pdf) (last visited Feb. 22, 2010).

<sup>80</sup> CSVA Report at ¶¶ 140-52.

<sup>81</sup> CSVA Report at p.90, Statement of Chairman Julius Genachowski.

<sup>82</sup> PointSmart.ClickSafe Report at i.

<sup>83</sup> *Id.* at 38.

monitoring software on all Internet-enabled devices used” by their children.<sup>84</sup> Other leading investigators of the parental control issue have reached similar conclusions. In the Berkman Report to the State Attorneys General, the authors came to the conclusion, after a thorough investigation, that “a combination of technologies, in concert with parental oversight, education, social services, law enforcement, and sound policies by social network sites and service providers may assist in addressing specific problems that minors face online.”<sup>85</sup> The Technical Advisory Board to the authors of the report did note that “[t]here is a concern that some technology companies will sell information that they collect on minors to advertisers or otherwise target advertising to specific children or age groups.”<sup>86</sup> However, this concern was not further examined and the report ignored this issue when supporting the use of parental control software.

While these parental control technologies may protect children from certain risks, they have the potential to concomitantly create additional risks of exposure to inappropriate content that is overly-commercial and privacy invasive.

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<sup>84</sup> Family Online Safety Institute, *Top Internet Safety Tips for Parents*, available at <http://www.fosi.org/cms/downloads/resources/fosi-parent-tips.pdf> (last visited Feb. 22, 2010).

<sup>85</sup> The Internet Safety Technical Task Force, *Enhancing Child Safety & Online Technologies: Final Report of the Internet Safety Technical Task Force To the Multi-State Working Group on Social Networking of State Attorneys General of the United States* 6 (2008) (hereinafter “Berkman Report”) available at

[http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF\\_Final\\_Report.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF_Final_Report.pdf) (last visited Feb. 22, 2010); see also Thierer, *The Progress & Freedom Foundation, Parental Controls & Online Child Protection: A Survey of Tools & Methods* 17 (2009) (“[T]he best answer to the problem of unwanted media exposure or contact with others is for parents to rely on a mix of technological controls, informal household media rules, and, most importantly, education and media literacy efforts.”).

<sup>86</sup> Berkman Report at 32.

## **B. Child Safe Browsers Overly Expose Children to Commercial Content**

In the NOI, the Commission expresses concern regarding advertising that is “specifically directed to children and used to influence children’s consumption of products.” The Commission has long sought to protect children from excessive and inappropriate advertising on television. As the Commission expresses concern about advertising on the Internet, CCFC would like to encourage the Commission to approach the issue of Internet advertising to children with the same diligence and concern that it approaches television advertising to children. CCFC is particularly worried that some commercial browsers, which are ostensibly designed to protect children from harm, may restrict children to heavily branded or commercialized websites. A number of examples discussed in this section demonstrate this point. These products exploit parental concerns about inappropriate content on the Internet, and minimize or ignore the potential harms of commercial content, in order to market to children.

The Commission has long maintained a policy of regulating advertising to children. Children are particularly vulnerable to advertising, in part because they often are unable to distinguish between content and advertising.<sup>87</sup> The FCC began restricting the amount and type of television advertising to children starting with the 1974 Policy Statement.<sup>88</sup> In addition to limiting the amount of time that could be used for advertising during children’s programming, the FCC Policy Statement made clear that broadcasters should not broadcast “program length

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<sup>87</sup> American Psychological Association, *Report of the American Psychological Association Task Force on Advertising and Children* 4-5 (2004), available at <http://www.apa.org/releases/childrenads.html> (“Studies of children indicate that those below the ages of 4-5 years do not consistently distinguish program from commercial content, even when program/commercial separation devices... are used.... [M]ature comprehension of advertising occurs no earlier than age 7–8 years on average.”).

<sup>88</sup> *Petition of Action for Children’s Television (ACT) for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children’s Programming and the Establishment of a Weekly 14-Hour Quota of Children’s Television Programs*, 50 FCC 2d 1 (1974).

commercial[s]” or allow “host-selling.”<sup>89</sup> In addition, the Commission decided that basic fairness required television stations to maintain a clear separation between program content and commercial messages.

In the mid-1980s, the FCC eliminated these policies, and Congress responded by passing the Children’s Television Act in 1990.<sup>90</sup> Congress found that “special safeguards are appropriate to protect children from over-commercialization on television.”<sup>91</sup> In addition to directing the FCC to limit commercial time on children’s programs on broadcast television, it extended these limits to children’s programming on cable.<sup>92</sup> As new video delivery platforms have developed, the Commission has expanded the restrictions on child directed content to the new platforms. For example, in 2004, the FCC extended the advertising policies to children’s programming on direct broadcast satellite systems and digital television.<sup>93</sup> Children are now being pursued as advertising targets on the Internet as well as via television. Children’s needs do not change depending on the media delivery platform that they are using. They need to be protected from advertising on the Internet just as they need to be protected from advertising on television.

The KidZui browser exemplifies the problem of over-commercialized computer products intended for use by children. It only allows children to access to a set of approved (“white-listed”) websites. KidZui, like other parental control products, is marketed to parents as a tool they should use to keep their children safe. Kidzui is described on its website as “a safe, fun, kids’ search engine, filter, and online web browser with over 2.5 million parent and teacher

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<sup>89</sup> *Id.* at ¶ 7.

<sup>90</sup> *See* Children’s Television Act, 47 U.S.C.A. § 303a (2010).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Direct Broadcast Satellite Public Interest Obligations Sua Sponte Reconsideration, 19 FCC Rcd. 5647, at ¶ 44 (2004); 47 C.F.R. § 25.701(e); *Children’s Television Obligations of Digital Television Broadcasters*, 19 FCC Rcd 22943, at ¶ 72 (2004).

approved websites, videos and games.”<sup>94</sup> It is highlighted by several sources as a popular,<sup>95</sup> high-quality browser option for children.<sup>96</sup>

When the Kidzui browser is opened, the user is bombarded with branded content. Below is an image of the start page of the KidZui browser set for use by a 9-year-old girl.<sup>97</sup>



Note the prominent promotion for a Disney show, Starstruck, as well as the links for Nick Jr. and the Disney Channel in the above image. The browser can be set so that a child may only exit if a password is entered, so this branded content may be hard to escape while the child is using the computer. KidZui contains preset browsing categories on its homepage and web search page.

These categories include “Coolest,” which links to the most popular sites on KidZui – most of

<sup>94</sup> Kidzui, <http://www.kidzui.com> (last visited Feb. 22, 2010).

<sup>95</sup> KidZui has been downloaded 17,911 times from Cnet.com and 336,492 times as Mozilla Firefox add-on. Cnet, [http://download.cnet.com/KidZui-The-Internet-for-Kids/3000-2132\\_4-10884184.html?tag=mncol](http://download.cnet.com/KidZui-The-Internet-for-Kids/3000-2132_4-10884184.html?tag=mncol) (last visited Feb. 22, 2010); KidZui: Add-ons for Firefox, <https://addons.mozilla.org/en-US/firefox/addon/9689> (last visited Feb. 22, 2010).

<sup>96</sup> See, e.g., Ann Reeks, *KidZui Finds Good Stuff for Youngsters*, HOUSTON CHRONICLE, Apr. 14, 2008, available at <http://www.chron.com/disp/story.mpl/tech/athome/5700620.html> (last visited Feb. 22, 2010).

<sup>97</sup> Kidzui, <http://www.kidzui.com> (last visited Feb. 18, 2010).

which are related to websites such as Disney, Cartoon Network, or Nickelodeon, and “Totally Girl,” which links to a number of commercial websites including Barbie, Bella Sara, Disney Princess and My Little Pony as shown below.



A number of other child-friendly browsers steer children toward branded websites. For instance, Hoopah provides a child-friendly computing experience, including a white-listing web browser and is focused on websites appropriate for children.<sup>98</sup> While the browser does limit children’s browsing to age-appropriate websites, its desktop application also “offers a built-in drawing application with some serious brand placement by Crayola... [and c]licking the big Crayola logo button takes them off to a text- and advertising-filled Crayola Web site.”<sup>99</sup> Additionally, Hoopah has a corporate sponsorship program, where corporations can create an

<sup>98</sup> Hoopah LLC, <http://www.hoopah.com/> (last visited Feb. 22, 2010).

<sup>99</sup> Neil J. Rubenking, *Hoopah Kidview Explorer 6 Review*, PC MAGAZINE, <http://www.pcmag.com/article2/0,2817,2325318,00.asp> (last visited Feb. 22, 2010).

interactive store featured in a virtual environment for children called “Hoopahville.”<sup>100</sup> Another product, the KidRocket browser, only allows children to access thirteen websites other than the Kidrocket.org site.<sup>101</sup> Of these websites, six – Hotwheels, Crayola, Cartoon Network, Nickelodeon, Barbie, and Disney – are highly commercial.<sup>102</sup> KidRocket is an extreme example, but all of these white-listing browsers define worlds of websites that children can visit, and commercial entities are consistently overrepresented in these worlds. While parental control products may provide safe searching environments for children, at least with respect to violent or sexually-explicit material, they may also steer children toward commercial content and branded websites.

Once commercial sites are accessed, children are placed in environments where they are surrounded by advertising and provided the opportunity to play “advergames,” games which include an advertising element. These commercial sites blur the lines between content and advertising and attempt to hold children’s attention, prolonging their exposure to advertising and advergames. This commercial content is not only dangerous because it introduces children to the consumer culture at very young ages, but also because some of these commercial sites contain content that sexualizes children or exposes them to violence. For example, Barbie has been criticized in the media and by psychologists for sexualizing young girls,<sup>103</sup> and the Nickelodeon website links to AddictingGames.com which contains numerous violent and sexual games.<sup>104</sup>

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<sup>100</sup> Hoopah, Corporate Sponsors, <http://www.hoopah.com/partners/corporate-sponsors.html> (last visited Feb. 22, 2010).

<sup>101</sup> Our Kidsafe Website List, [http://kidrocket.org/kids\\_website\\_list.php](http://kidrocket.org/kids_website_list.php) (last visited Feb. 22, 2010).

<sup>102</sup> *Id.*

<sup>103</sup> Stacy Weiner, *Goodbye to Girlhood?*, THE WASHINGTON POST, February 20, 2007.

<sup>104</sup> Nickelodeon, Games, <http://www.nick.com/games/addicting-games> (last visited Mar. 3, 2010); AddictingGames, Shooting Games, <http://www.addictinggames.com/shootinggames.html> (last visited Mar. 3, 2010).

Commercial content poses dangers to children regardless of the medium by which it is delivered to them. Children need to be protected from commercial content online. While “child-safe” web browsers and other parental control products may seem like the answer, they often come with their own problems, as described above. The Commission should proactively take steps to protect children from commercial content online. The Commission should also take care to discuss the drawbacks of parental control products when discussing their benefits.

### **C. Online Safety Products May Compromise Children’s Privacy**

The Notice requests further information on the risks posed by electronic media, including risks associated with “compromised privacy.”<sup>105</sup> Additionally, it references concerns about commercial organizations engaging in data-mining practices and using that information to target children for advertising.<sup>106</sup> Some of the products marketed to parents as protecting children may put children’s privacy directly at risk by using the data in privacy invasive ways. Further, other products have insufficient privacy disclosures. These data-collecting parental control products may subject children to targeted advertising or data breaches that could reveal their personal information to unknown persons. These risks exist even with data that is characterized as aggregate or anonymous data because individual persons have become increasingly easy to identify with such data over the past few years.

The products offered by a company called EchoMetrix – Family Safe Parental Controls, Sentry Parental Controls, and Pulse – highlight the risks of invasive data collection practices and vague privacy policies.<sup>107</sup> EchoMetrix filed a comment in response to this NOI asking that the

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<sup>105</sup> NOI at ¶ 28.

<sup>106</sup> NOI at ¶ 31.

<sup>107</sup> The Electronic Privacy Information Center recently filed a complaint with the Federal Trade Commission alleging, among other things, that Echometrix is engaging in unfair and deceptive

Commission support the use of parental control products.<sup>108</sup> EchoMetrix is a prime example of why the Commission should not support parental control products without reservation.

EchoMetrix products Family Safe and Sentry are advertised as parental monitoring software products that allow parents to monitor a child's Internet chat and instant messaging.<sup>109</sup> The homepage for Sentry, for example, highlights the number of children who are sexually solicited online and states "Your Child Online = Danger," and then goes on to describe its product as one that "truly provides your child with a safe online environment."<sup>110</sup> On a separate website, Pulse is marketed to advertisers and market researchers as:

"proprietary technology [used] to aggregate, measure and analyze consumer opinion and sentiment from vast amounts of anonymous User Generated Content (UGC), the fastest growing content on the Web. The content comes from many sources, including social media web sites, blogs, forums, chat, and message boards to yield valuable insight which enables marketing and media executives to better understand and reach their target audience."<sup>111</sup>

The products work together to form a vast database of user generated content that the Sentry software logs from its users and stores on EchoMetrix servers.<sup>112</sup> This user generated content is then sold to Pulse customers.

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acts by not disclosing the link between Pulse and its parental control software. The complaint is available at <http://epic.org/privacy/ftc/Echometrix%20FTC%20Complaint%20final.pdf>.

<sup>108</sup> Comments of EchoMetrix, Corporation, MM Docket No. 00-167, December 3, 2009.

<sup>109</sup> Sentry Parental Controls, *available at* <https://www.sentryparentalcontrols.com/products/> (last visited Feb. 22, 2010).

<sup>110</sup> *Id.* at Appendix C.

<sup>111</sup> Echometrix, Products: The Pulse, *available at* <http://www.echometrix.com/Products/Pulse.aspx> (last visited Feb 22, 2010).

<sup>112</sup> EchoMetrix, Inc., 2008 Annual Financial Statement, 5, *available at* [http://markets.on.nytimes.com/research/modules/company\\_topic/drawFiling.asp?docKey=136-000114420409020647-4UVBJ43F8U6IAKHRQMEDM2R8G1&docFormat=TXT&formType=10-K](http://markets.on.nytimes.com/research/modules/company_topic/drawFiling.asp?docKey=136-000114420409020647-4UVBJ43F8U6IAKHRQMEDM2R8G1&docFormat=TXT&formType=10-K) (last visited Feb. 22, 2010).

The collection of data as specific as personal conversations is extremely problematic. Such information, even if it is not “personal information” as defined by COPPA (which many of these companies base their privacy policies on),<sup>113</sup> may well be personally identifiable information. Recent studies suggest that promises of anonymous data collection may not adequately protect personal information.<sup>114</sup> Data considered to be anonymized can often be “de-anonymized” by combining it with other, sometimes publically available, data.<sup>115</sup> In a changing technical environment, the Commission should take particular care to protect children’s privacy, even when the data being collected from them is characterized as aggregate data.

The problems presented by the invasive data collection policies implemented in some parental control products are exacerbated by the fact that these data collection policies often are not disclosed to users in a clear and conspicuous manner. EchoMetrix is an apt example of this problem as well. The Sentry website does not provide up-front information about its links to EchoMetrix and parents would either have to visit the separate EchoMetrix website or read through the “Company News” on the Sentry website to find out any information about the potential link to Pulse.<sup>116</sup> Parents would have no reason to do this.

EchoMetrix does disclose that it may use Sentry data as part of a marketing program through its End User License Agreement (“EULA”), but it does not clearly state that it will use the data from Sentry as part of Pulse. The Sentry EULA states that the program uses information from a child’s Internet activities – including their browser history and chats – to “provide

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<sup>113</sup> See COPPA, 15 U.S.C.A. § 6501 (2010).

<sup>114</sup> Bruce Schneier, *Why 'Anonymous Data' Sometimes Isn't*, WIRED (Dec. 13, 2007), available at [http://www.wired.com/politics/security/commentary/securitymatters/2007/12/securitymatters\\_12](http://www.wired.com/politics/security/commentary/securitymatters/2007/12/securitymatters_12) 13 (last visited Feb. 22, 2010).

<sup>115</sup> *Id.*

<sup>116</sup> Sentry Parental Controls, Company News, available at <https://www.sentryparentalcontrols.com/Company/News.aspx?documentID=523> (last visited Feb. 22, 2010).

anonymous reporting for internal and external clients.”<sup>117</sup> This disclosure uses vague language to deceive parents about the company’s actual data sharing practices. The EULA does not make it clear that the Sentry data is used for marketing through Pulse, stating rather that is used to “provide anonymous reporting.”<sup>118</sup> In this case, anonymous reporting means selling actual snippets of the child’s conversation to corporations that will use that information to tailor their advertising. With clients such as News Corp.’s Fox Broadcasting, Dreamworks SKG Inc, and Viacom Inc.’s Paramount Pictures,<sup>119</sup> the data that Pulse receives can be used to target children for marketing campaigns and to refine advertising techniques.

By burying data sharing disclosures in the EULA and not prominently disclosing them on the Sentry website, Echometrix makes it extremely difficult for parents to know how their child’s data is being used. According to Echometrix, its software was downloaded 50 to 100 times per day in the 2008 fiscal year.<sup>120</sup> Large numbers of parents are using this program, which makes the lack of upfront disclosure particularly troubling. These parents, who are downloading this program to keep their children safe, are unknowingly opening up their children’s private data for use by marketers and corporate advertisers.

Data collection practices that are not as egregious may still facilitate privacy breaches and contribute to the over-commercialization of children. Some parental control companies are

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<sup>117</sup> EchoMetrix, Inc., End User License Agreement, *available at* <http://www.sentryparentalcontrols.com/Support/Policies/EULA.aspx> (last visited Feb. 22, 2010).

<sup>118</sup> *Id.*

<sup>119</sup> Deborah Yao, *Web-monitoring software gathers data on kid chats*, ASSOCIATED PRESS (Sept. 4, 2009) *available at* <http://www.abcnews.go.com/Technology/wireStory?id=8494258> (last visited Feb. 22, 2010).

<sup>120</sup> EchoMetrix, Inc., 2008 Annual Financial Statement, *available at* [http://markets.on.nytimes.com/research/modules/company\\_topic/drawFiling.asp?docKey=136-000114420409020647-4UVBJ43F8U6IAKHRQMEDM2R8G1&docFormat=TXT&formType=10-K](http://markets.on.nytimes.com/research/modules/company_topic/drawFiling.asp?docKey=136-000114420409020647-4UVBJ43F8U6IAKHRQMEDM2R8G1&docFormat=TXT&formType=10-K) (last visited Feb. 22, 2010).

vague about whether they are collecting data at all, what kind of data they are collecting and who they are going to share the data with. The Hoopah program, for instance, states in its “Frequently Asked Questions” section of its privacy policy that it “gathers anonymous information, which may be used by Hoopah or shared with advertisers.”<sup>121</sup> Nowhere in that section does it define “anonymous information.” Another parental control product, Glubble, states in its privacy statement that it may share aggregated data or use it for marketing purposes.<sup>122</sup> However, Glubble’s online privacy policy does not define “aggregated data.”

While some programs, such as those mentioned above, clearly state that they may sell user data, others make more ambiguous disclosures or none at all. Because some privacy policies are more detailed than others, parents who read the privacy policies before purchasing software may be falsely lulled into thinking that a program that does not make any mention of data collection or selling does not engage in such practices.

KidZui, for instance, states in its main privacy policy that it “does not sell personally identifiable information . . . to advertisers” but “non-personal ‘aggregated data’ may be used to enhance the operation of our website, or analyze interest in the areas of our website.”<sup>123</sup> Additionally, in the children’s privacy policy, KidZui states that it “track[s] what all children of the same age look at and enjoy online to tailor and improve [its] services, without sharing personally-identifiable information about any individual child.”<sup>124</sup> Neither of these statements makes clear whether KidZui sells non-personal “aggregated data” to outside parties who could use it for advertising purposes, or whether this information is used internally only. Another

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<sup>121</sup> Hoopah, Privacy Statement, *available at* [http://www.hoopah.com/privacy\\_statement.htm](http://www.hoopah.com/privacy_statement.htm) (last visited Feb. 22, 2010).

<sup>122</sup> Glubble, Privacy Policy, *available at* [http://www.glubble.com/privacy\\_policy](http://www.glubble.com/privacy_policy) (last visited Feb. 22, 2010).

<sup>123</sup> KidZui, Privacy Policy, [http://www.kidzui.com/privacy\\_policy](http://www.kidzui.com/privacy_policy) (last visited Feb. 22, 2010).

<sup>124</sup> *Id.*

product, Peanut Butter Software, which not only limits children to specific, parent-selected websites but also locks down the computer desktop,<sup>125</sup> states in its privacy policy that it “does not share your personally identifiable information with outside companies for their promotional use,” but it makes no mention of whether or how the company uses non-personally identifiable information.<sup>126</sup> Some parental control products make no disclosures whatsoever about how they used children’s data. For example, the “privacy policy” link in MyKidsBrowser, redirects to its End User License Agreement (EULA).<sup>127</sup> The EULA makes no mention of how the software uses a child’s data, nor does it mention personal information or privacy.<sup>128</sup> Parents are not notified and even reading the fine print will not educate them on how the company uses their child's browsing data.

The Internet exposes children to significant risks, some of which the Commission has taken action to protect them from when the risks are present in television programming. The CCFC requests that the Commission protect children against these risks regardless of the delivery platform. While parental control products may be argued to be solutions that protect children from inappropriate content on the Internet, many of them offer solutions to one problem while creating another. Parental control software may expose children to significant amounts of advertising, heavily commercialized environments and data collection practices that may result in privacy breaches or expose children to additional and more targeted advertising. The CCFC requests that the Commission keep these risks in mind when considering the effectiveness and

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<sup>125</sup> Neil J. Rubenking, *Peanut Butter PC Review*, available at <http://www.pcmag.com/article2/0,2817,2321102,00.asp> (last visited Feb. 22, 2010).

<sup>126</sup> Peanut Butter Software, Privacy Policy, available at, <http://www.peanutbuttersoftware.com/privacy.aspx> (last visited Feb. 22, 2010).

<sup>127</sup> MyKidsBrowser, available at, <http://www.mykidsbrowser.com/> (last visited Feb. 22, 2010).

<sup>128</sup> MyKidsBrowser, User Agreement, available at, [http://www.mykidsbrowser.com/user\\_agreement.php](http://www.mykidsbrowser.com/user_agreement.php) (last visited Feb. 22, 2010).

usefulness of parental controls and avoid recommending these technologies without recognizing the risks associated with them.

Respectfully Submitted,

/s/  
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